IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No. 2360 of 2004

Ramchandra Pandurang Kamble & ors. Petitioners
Vs.
Sahdev Hari Kamble Respondent

Mr.P.R.Arjunwadkar for petitioners.
Mr.Siddharth Karpe with Mr.S.S.Aradhye for resp.

CORAM: B.H.MARLAPALLE,J.
June 14, 2006.

P.C.

. Heard Mr.Arjunwadkar, the learned counsel for the petitioners-plaintiffs who have instituted Regular Civil Suit No.393 of 2003 in the Court of the 4th Jt.Civil Judge, Junior Division, Kolhapur. The application at Exhibit 5 for temporary injunction came to be granted by the trial Court on 10/7/2003 and the said order was challenged in Misc. Civil Appeal No.204 of 2003 before the District Court. The learned 5th Addl. District Judge at Kolhapur was pleased to allow the appeal vide his judgment and order dated 27/1/2004 and by setting aside the impugned order, the application at Exhibit 5 came to be dismissed.

. The trial Court while granting temporary injunction had relied upon mainly the two documents i.e. 7/12 extracts for the year 2002-2003 and the

certificate issued by the Panchaganga Sahkari Panipurawatha Mandal. Based on these two documents the trial Court recorded a prima facie finding that the plaintiffs were cultivating the suit land when the suit was instituted.

. The learned Addl. District Judge on verification of the record noticed that the entries in the 7/12 extracts in Gat Nos.250/3 and 250/4 were made for the first time by the Tahsildar on 17/12/2003 i.e. after the suit was instituted in March 2003 and by this order the land was shown in possession of the plaintiffs from 1979 onwards. It has been held by the lower Appellate Court that the trial Court could not have come to the prima facie conclusion in favour of the plaintiffs on the basis of this solitary entry. It was also noted that the order dated 17/12/2003 was set aside by the Sub Divisional Officer in RTS Appeal No.2 of 2003 and Second Appeal No.189 of 2003 is pending before the Additional Collector as at present. In the second appeal the order passed by the SDO has been stayed.

. Notwithstanding this position the fact remains that the Tahsildar entered the names of the

plaintiffs for the first time in the revenue record and that too in the cultivation column on 17/12/2003. The certificate issued by the Co-operative Society could not be called to be a public document and could not carry much weightage in the facts of this case to hold a prima facie case in favour of the plaintiffs, more so when the plaintiffs were claiming possession of the suit property as tenants on the basis of the agreement dated 1/1/1975 and the defendants pointed out that they had purchased the suit land from the original owner Sadhashiv Madiwal by sale deed dated 6/4/1978. Under these circumstances, the learned Addl. District Judge was right in holding that the view taken by the trial Court in allowing the application at Exhibit 5 was unsustainable and was required to be quashed and set aside and in any case there is no stay operating in favour of the present petitioners from 12/3/2004 onwards.

. The petition is rejected summarily.

(B.H.MARLAPALLE,J.)